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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.               | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------------|------------------|
| 10/026,161  | 12/21/2001  | Clayton L. Robinson  | Z1154/02118                       | 8175             |
| 22884   | 7590        | 08/23/2005           |                                   |                  |
| MIDDLETON & REUTLINGER<br>2500 BROWN & WILLIAMSON TOWER<br>LOUISVILLE, KY 40202 |             |                      | EXAMINER<br>HYLTON, ROBIN ANNETTE |                  |
|   |             |                      | ART UNIT<br>3727                  | PAPER NUMBER     |

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/026,161             | ROBINSON ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Robin A. Hylton        | 3727                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-9,11-21 and 23-36 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9,11-21,23 and 26-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of the product claims in the reply filed on May 27, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 24 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 27, 2005.
3. In view of applicant's remarks directed to the election of species requirement (Groups A-C) in the reply filed on May 27, 2005, the election of species requirement is withdrawn and all product claims 2-9, 11-21, 23 and 26-36 are rejoined and have been considered on the merits.

### ***Claim Rejections - 35 USC § 112***

4. Claims 6, 18, and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the collar" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "the collar" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 33 recites the limitation "the collar" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 4,23,26,28, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ou-Yang (US 4,818,577).

See Figure 3 and column 3, lines 46-53 regarding the structure set forth in claims 26 and 28.

See column 3, lines 38-40 regarding the at least one layer of bonding material in claims 4 and 31.

See column 2, lines 29-33 regarding the material set forth in claim 23.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 2,3,29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang in view of Markovich et al. (US 5,723,507).

The background of the patent to Ou-Yang states the closure liner is to be used in conditions wherein the temperature exceeds 150° F, but does not specifically set forth the desired temperature is 165° F. Additionally, Ou-Yang is silent regarding the shore A hardness of the liner material. See column 3, lines 38-40 regarding the material set forth in claims 3 and 30.

Markovich teaches thermoplastic and thermoplastic rubber liners having a shore A hardness value of about 70.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the closure with a liner having a melting point greater than about 265° F and a shore A hardness value of about 70. Doing so provides a closure capable of withstanding high temperatures in a retort process and which maintains a sufficient seal between the closure and container.

9. Claims 5-8 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang in view of Montgomery et al (US 5,009,323).

Ou-Yang teaches the claimed closure (and container) except for an essentially circular tamper-evident band depending from the closure skirt.

Montgomery teaches it is known to provide a closure with an essentially circular tamper-evident band depending from the closure skirt. Two types of bands are known wherein one comprises a continuous bead and one comprises flexible finger projections.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Montgomery's essentially circular tamper-evident band depending from the closure skirt of Ou-Yang. Doing so is a known practice in the closure art to protect the contents of a sealed container and to alert the end user of possible tampering.

10. Claims 9 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang in view of Kelly (US 6,202,871).

Ou-Yang teaches the claimed closure (and container) except for at least one slit extending a predetermined length from the top to the skirt.

Kelly teaches it is known to provide a closure with various configurations of slits extending a predetermined length from the top to the skirt.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one slit extending a predetermined length from the top to the skirt of Ou-Yang. Doing so allows for air circulation, venting and/or washing of the sealed container.

11. Claims 11,12,16 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ou-Yang.

See Figure 3 and column 3, lines 46-53 regarding the structure set forth in claim 27.

See column 2, lines 29-35 regarding the material set forth in claims 11 and 12.

See column 3, lines 38-40 regarding the at least one layer of bonding material in claim 16.

Figures 2 and 3 appear to depict the closure threads having an upper edge wherein an angle  $\Theta$  is defined between the upper edge and a horizontal plane, and the angle  $\Theta$  is less than about 45°.

Wherein the thread of Ou-Yang does not specifically taught to have an angle  $\Theta$  less than about 45°, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the thread with an angle defined between the upper edge and a horizontal plane of less than about 45° as it known in the art.

12. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang.

Ou-Yang teaches the claimed closure and container except for the angle  $\Theta$  being less than about 20° as in claim 13, or the angle  $\Theta$  being about 20° as in claim 14, or the angle  $\Theta$  being less than about 10° as in claim 15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the thread to have an angle  $\Theta$  of any desired dimension including less

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than about 20° as in claim 13, or about 20° as in claim 14, or less than about 10° as in claim 15 for the desired engagement and slip resistance between the closure and container.

13. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang in view of Montgomery.

Ou-Yang teaches the claimed closure (and container) except for an essentially circular tamper-evident band depending from the closure skirt.

Montgomery teaches it is known to provide a closure with an essentially circular tamper-evident band depending from the closure skirt. Two types of bands are known wherein one comprises a continuous bead and one comprises flexible finger projections.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Montgomery's essentially circular tamper-evident band depending from the closure skirt of Ou-Yang. Doing so is a known practice in the closure art to protect the contents of a sealed container and to alert the end user of possible tampering.

14. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang in view of Kelly.

Ou-Yang teaches the claimed closure (and container) except for at least one slit extending a predetermined length from the top to the skirt.

Kelly teaches it is known to provide a closure with various configurations of slits extending a predetermined length from the top to the skirt.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one slit extending a predetermined length from the top to the skirt of Ou-Yang. Doing so allows for air circulation, venting and/or washing of the sealed container.

***Response to Arguments***

15. Applicant's arguments, see pages 10-18, filed June 25, 2004, with respect to the rejection(s) of claim(s) 2-9, 11-21, 23-36 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ou-Yang alone and in combination with Markovich, Montgomery, and Kelly.

***Conclusion***

16. In view of the new grounds of rejection, this Office action is made non-final.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

18. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

19. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:



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Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

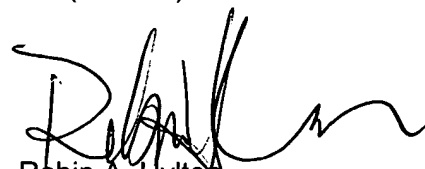
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
August 20, 2005

  
Robin A. Hylton  
Primary Examiner  
GAU 3727